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09/606,787	06/28/2000	Bich Nguyen	2705-125	6324

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EXAMINER

HALIM, SAHERA

ART UNIT	PAPER NUMBER
2157	5

DATE MAILED: 12/03/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/606,787

Applicant(s)

NGUYEN ET AL.

Examiner

Sahera Halim

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 05 September 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1 - 21 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1 - 21 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 9/05/2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

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DETAILED ACTION

1. This Office Action is in response to communication filed on September 05, 2003.
2. Claims 18 – 21 have been added.
3. claims 1 – 21 are pending.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 1-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over “Applicant Admitted Prior Art” (AAPA) in view of Hinchley, U.S. Pat. No. 6,490,250.

6. Reference to claim 1, (AAPA) discloses a server for transmitting stored data to a network, comprising (Fig. 1 and page 1, line 34 - 12):

a transmit buffer for transmitting the stored data to the network (Fig. 1 and page 1, line 34 - 12);

AAPA is modified by adding a network bandwidth monitor for monitoring a bandwidth of the network; and

a transcoder for transcoding the stored data if the monitored bandwidth is less than a first preset value.

However, Hinchley discloses a network bandwidth monitor for monitoring a bandwidth of the network (abstract and col. 1, line 62 – col. 2, line 24); and

a transcoder for transcoding the stored data if the monitored bandwidth is less than a first preset value (abstract and col. 1, line 62 – col. 2, line 24).

It would have been obvious for one having ordinary skill in the art at the time of the invention to combine the teachings of Hinchley and AAPA in order to achieve accurate feedback in AAPA system to be used to ensure optimal bit rate is continuously achieved by the system (abstract).

7. Regarding claim 10, AAPA discloses an article comprising: a storage medium, said storage medium having stored thereon instructions for a server to transmit a portion of streaming media to a network, that, when executed by a computing device, result in transmitting the portion to the network (Fig. 1 and page 1, line 34 – 12);

AAPA fails to disclose monitoring a bandwidth of the network; and
transcoding the portion prior to transmitting if the monitored bandwidth is less than a first preset value.

However, Hinchley discloses monitoring a bandwidth of the network (abstract and col. 1, line 62 – col. 2, line 24); and

transcoding the portion prior to transmitting if the monitored bandwidth is less than a first preset value (abstract and col. 1, line 62 – col. 2, line 25).

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It would have been obvious for one having ordinary skill in the art at the time of the invention to combine the teachings of Hinchley and AAPA in order to achieve accurate feedback in AAPA to be used to ensure optimal bit rate is continuously achieved by the system (abstract).

8. Regarding claim 14, since claim 14 has the similar limitations as claim 10, it is rejected based on the same rational.

9. Regarding claims 2, AAPA does not teach the monitoring means includes a control unit for activating the transcoder when the monitored bandwidth is less than the first preset value. Nonetheless, Hinchley teaches the monitoring means includes a control unit for activating the transcoder when the monitored bandwidth is less than the first preset value (abstract, col. 1, line 62 – col. 2, line 25, and col. 4, line 17 – 53). It would have been obvious for one having ordinary skill in the art at the time of the invention to enhance the teachings of AAPA by including the control unit for activating the transcoder into the monitoring means because it adjusts the bit rates of the encoder for optimal bit rate (abstract).

10. Regarding claims 11 and 15, AAPA does not disclose activating a transcoder when the monitored bandwidth is less than the first preset value. However, Hinchley discloses activating a transcoder when the monitored bandwidth is less than the first preset value (col. 4, line 17 – 53 and abstract). It would have been obvious for one having ordinary skill in the art at the time of the invention to include this limitation to AAPA system in order adjust the bandwidth effectively.

11. Regarding claim 3, AAPA and Hinchley do not teach a redundancy encoder for redundancy encoding the transcoded data if the monitored bandwidth is less than a second preset value. However, redundancy encoding is well known in the art and it would have been obvious for one having ordinary skill in the art at the time of the invention to include redundancy encoding the transcoded data if the monitored bandwidth is less than a second preset value in order to assure that the required bandwidth is achieved in case the encoder fails to achieve the required bandwidth.

12. Reference to claims 12 and 16, AAPA and Hinchley do not disclose redundancy encoding the transcoded portion if the monitored bandwidth is less than a second preset value. However, redundancy encoding is well known in the art and it would have been obvious for one having ordinary skill in the art at the time of the invention to include redundancy encoding the transcoded data if the monitored bandwidth is less than a second preset value in order to assure that the required bandwidth is achieved in case the encoder fails to achieve the required bandwidth.

13. Regarding claim 4, AAPA and Hinchley do not teach a control unit for activating the redundancy encoder when the monitored bandwidth is less than the second preset value. However, it would have been obvious for a person having ordinary skill in the art at time of the invention to include activating the redundancy encoder when the monitored bandwidth is less than the second preset value in order to assure the required bandwidth is achieved.

14. Reference to claim 12 and 16, AAPA and Hinchley do not teach redundancy encoding the transcoded portion if the monitored bandwidth is less than a second preset value. However, it would have been obvious for a person having ordinary skill in the art at time of the invention to include activating the redundancy encoder when the monitored bandwidth is less than the second preset value in order to assure the required bandwidth is achieved.

15. Regarding claim 5, the first preset value equals the second preset value. AAPA and Hinchley do not teach the first preset value equals the second preset value. However, since the specification does not provide an advantage for this limitation, it would have been obvious to equate the first and second preset values or make the second preset value greater than or less than the first preset value. It would have been obvious to pick any of the above choices based on specific conditions.

16. Regarding claims 13 and 17, AAPA and Hinchley do not teach activating a redundancy encoder when the monitored bandwidth is less than the second preset value. However, it would have been obvious for one having ordinary skill in the art at time of the invention to activate the redundancy encoder when the monitored bandwidth is less than the second preset value to ensure the adjustment of required bandwidth.

17. Regarding claim 6, AAPA disclose a server for transmitting data to a network, comprising:

transmitting means for transmitting the data to the network (Fig. 1 and page 1, line 34 - 12);

AAPA does not disclose monitoring means for monitoring a bandwidth of the network; transcoding means for transcoding the data if the monitored bandwidth is less than a first preset value; and

redundancy encoding means for redundancy encoding the transcoded data prior to transmission if the monitored bandwidth is less than a second preset value. However, Hinchley discloses monitoring means for monitoring a bandwidth of the network (abstract and col. 1, line 62 – col. 2, line 24);

transcoding means for transcoding the data if the monitored bandwidth is less than a first preset value (abstract and col. 1, line 62 – col. 2, line 24).

Having the teachings of Hinchley and AAPA, it would have been obvious for one having ordinary skill in the art at the time of the invention to combine the teachings of Hinchley and AAPA in order to achieve accurate feedback in AAPA system to be used to ensure optimal bit rate is continuously achieved by the system (abstract). Moreover, Hinchley and AAPA do not teach redundancy encoding means for redundancy encoding the transcoded data prior to transmission if the monitored bandwidth is less than a second preset value. However, redundancy encoding is well known in the art and it would have been obvious for one having ordinary skill in the art at the time of the invention to include redundancy encoding for redundancy encoding the transcoded data prior to transmission if the monitored bandwidth is less than a second preset value in order to assure that the required bandwidth is achieved, in case the encoder fails to achieve the required bandwidth.

18. Claim 7 has the same limitation as claim 5 and therefore, it is rejected based on the same rational.

19. Regarding claim 8, AAPA does not disclose a control unit for activating the transcoding means when the monitored bandwidth is less than the first preset value and for activating the redundancy encoding means when the monitored bandwidth is less than the second preset value.

Nonetheless, Hinchley discloses activating the transcoding means when the monitored bandwidth is less than the first preset value (abstract and col. 4, line 17 – 53). It would have been obvious for one having ordinary skill in the art at the time of the invention to include this limitation to AAPA system in order adjust the bandwidth effectively. Moreover, AAPA and Hinchley do not disclose a control unit for activating the redundancy encoding means when the monitored bandwidth is less than the second preset value. However, it would have been obvious for a person having ordinary skill in the art at time of the invention to include activating the redundancy encoder means when the monitored bandwidth is less than the second preset value in order to assure the required bandwidth is achieved.

20. Claim 9 has the same limitation as claim 5 and 7 and therefore, it is rejected based the same rational.

21. Claims 18 – 21 have similar limitations as to claims 10 – 13 and therefore they are rejected under the same rational.

Response to Arguments

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22. Applicant's arguments filed September 9, 2003 have been fully considered but they are not persuasive.

23. In response to the Applicant's assumption, the Examiner acknowledges that the invention of the present application modifies the AAPA by adding a network bandwidth monitor for monitoring a bandwidth of the network.

24. In response to Applicant's arguments that Hinchley does not teach monitoring bandwidth of a network, the Examiner argues that AAPA discloses the network and network bandwidth and Hinchley disclose the monitoring. In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

25. In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case AAPA and Hinchley do not suggest a motivation for combining and the rejection is not relying on AAPA and Hinchlely. The rejection is relying on the knowledge

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generally available to one of ordinary skill in the art and the Applicant acknowledges that it has been discovered that redundancy encoding maintains transmission of data stream.

Conclusion

26. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

27. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sahera Halim whose telephone number is (703) 305-8054. The examiner can normally be reached on M-F from 8:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ario Etienne can be reached at (703) 308-7562. The fax numbers for the

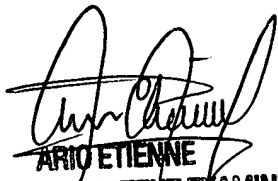
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organization where this application or proceeding is assigned are (703) 305-7239 for regular communications and (703) 746-7238 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 305-3900.

Sahera Halim
Patent Examiner
AU: 2157

November 18, 2003



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